IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P. JYOTHIMANI

W.A.No.152 of 2007
and
M.P.No.1 of 2007

A.Subramani ... Appellant

-vs-

1. The Management of Tamil Nadu
   State Transport Corporation,
   (Coimbatore Division-I) Limited,
   Udagamandalam.

2. The Presiding Officer,
   Labour Court,
   Coimbatore. ... Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent against the order, dated 08.12.2006 made in W.P.No.2892 of 2006 on the file of this Court. Praying to stay the operation of the order passed by the 2nd respondent in I.P.No.234 of 2000 dated 8.2.2005 and in M.P.No.1 of 2007 praying to grant interim stay of the order dated 8.12.2006 in W.P.No.2892 of 2006 on the file of High court of Judicature at Madras in so for as it directed the appellant to return the sum of Rs.2,30,568/- ordered as conpensation in W.C.No.205 of 1999 pending disposal of appeal.

For appellant :: Mr. R.Sunil Kumar
For respondents :: Mr.C.Kanagaraj for R1

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J U D G M E N T

(JUDGMENT OF THE COURT WAS DELIVERED BY THE HONOURABLE THE CHIEF JUSTICE)

Admit. Learned counsel appearing for the first respondent Corporation waives service. By consent, the appeal is taken up for hearing.

2. The appellant was working as a Conductor in the first respondent-Tamil Nadu State Transport Corporation. On 15.9.1996, when the appellant

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was on duty on the route from Mettupalayam to Coimbatore, he fell down from the running bus and received grievous injury on his head. The appellant was in coma for a period of 45 days and he had to undergo medical treatment for nearly four months. The appellant thereafter joined the service and he was referred to the Medical Board at Udhagamandalam Government Hospital, which opined that he is unfit to take up the work involving prolonged standing or walking. Consequently, the first respondent Corporation issued a notice to the appellant that he has become disabled and, therefore, he should be discharged from the post of Conductor and accordingly discharged him from service on 29.9.1998. The appellant filed a claim petition under the provisions of the Workmen's Compensation Act in W.C.No.205 of 1999, before the Deputy Commissioner of Labour, Coimbatore. The Deputy Commissioner vide his award dated 28.01.2000 awarded a compensation of Rs.2,30,568/- to the appellant and this order has not been challenged by the Corporation and has attained finality. The appellant also raised an industrial dispute in I.D.No.254 of 2000 under Section 2(A) (2) of the Industrial Disputes Act for alternative employment with continuity of service. The Labour Court, Coimbatore vide Award, dated 08.02.2005 declared that the appellant is entitled for the relief sought for under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter will be referred to as 'the Disabilities Act' in short) and directed the 1st respondent to reinstate the appellant with full back wages.

3. The Award of the Labour Court was challenged by the first respondent Corporation by means of the present writ petition contending inter alia that the appellant having received a compensation of Rs.2,30,568/- under the Workmen's Compensation Act, cannot again claim alternative employment in terms of Section 47 of the Disabilities Act, as it is not open for the employee to pursue both the remedies. The learned Single Judge accepted the contention of the Management and held that the appellant is not entitled to enjoy both the benefits, i.e. the compensation under the Workmen's Compensation Act and alternative employment under the Disabilities Act, and that the appellant can claim only one relief from the Corporation. Consequently, the learned single Judge directed the appellant to repay Rs.5,000/- per month from his salary and clear the total amount and in case, the appellant retires before the recovery of the amount, the Corporation would be at liberty to deduct the same from the terminal benefits of the appellant.

4. Mr.R.Sunil Kumar, learned counsel appearing for the appellant strenuously contended that by virtue of Section 72 of the Disabilities Act, the provisions of the said Act are in addition to and not in derogation of any other law for the time being in force. Learned counsel urged that the receipt of compensation under the Workmen's Compensation Act will not disentitle reinstatement of workman with consequential benefits. He submitted that in cases involving permanent partial disablement, the courts will have to necessarily see whether the earning capacity is reduced in every employment which he was capable of

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undertaking at the time of accident and not merely a particular employment in which he is engaged or in which the salary received by the disabled. Learned counsel submitted that the Disabilities Act is a beneficial piece of legislation which came into effect when other enactments providing security to the workforce were available and the legislature while drafting the Act was conscious about the other enactments and in spite of the same provided additional benefits to the disabled workmen. Learned counsel placed heavy reliance on the decision of the Supreme Court in the case of Kunal Singh -vs- Union of India and another (2003 (2) LLJ 735).

5. In Kunal Singh's case, a two-Judge Bench of the Supreme Court has held that the object of the Disabilities Act was to provide some sort of succor to the disabled persons and the provisions of Section 47 are mandatory in nature. Shivraj Patil, J. speaking for the Bench, observed in paras 8 and 9 as follows:-

> ''8. The need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in natural life was felt for a long time. To realize objective that people with disabilities should have equal opportunities and keeping their hopes and aspirations in view a meeting called the ''Meet to Launch the Asian and Pacific Decades of Disabled Persons'' was held in Beijing in the first week of December, 1992 by the Asian and Pacific countries to ensure full participation and equality of people with disabilities in the Asian and Pacific Regions'. This Meeting was held by the Economic and Social Commission for Asia and Pacific. A Proclamation was adopted in the said meeting. India was a signatory to the said Proclamation and they agreed to give effect to the same. Pursuant thereto this Act was enacted, which came into force on January 1, 1996. The Act provides some sort of succor to the disabled persons.
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> 9. ..... It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads ''no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this, no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of

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Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the A ct. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

(emphasis supplied)

The Bench also rejected the argument of the respondents that as the appellant was granted invalidity pension under Rule 38 of the Central Civil Services Pension Rules, 1972, he cannot claim the benefit of Section 47 of the Disabilities Act and observed in paragraphs 11 and 12 as follows:-

''11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS (Pension) Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads:

''72. Act to be in addition to and not in derogation of any other law. The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

12. Merely because under Rule 38 of CCS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provision of Section 47 of the Act.

(emphasis supplied)

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6. Even prior to the enactment of the Disabilities Act, the Calcutta High Court in Ram Naresh Singh -vs- Lodhna Colliery Co., (1973) Lab IC 1656 (Cal) observed, ''the fact that he (workman) is still holding his old post and getting his old wages is because his employer is giving it to him by way of grace. It would be a complete misunderstanding of the Workmen's Compensation Act to hold that in such circumstances, the workman will not be entitled to any compensation. This was not certainly the intention of our judgment in AIR 1967 Cal 7, Commissioners for the Port of Calcutta -vs- Prayag Ram, (1966 31 FJR 149 (Cal)."

7. In Executive Engineer, PWD (B & R) -vs- Narain Lal, (Raj) (1977 Vol.52 FJR 67), a learned Single Judge of Rajasthan High Court, following the decision in the case of Calcutta High Court in Ram Naresh Singh -vs- Lodhna Colliery CO., cited supra, held that the theme in the Workmen's Compensation Act is to provide security to the workman who receives partial incapacity resulting in a loss in the earning capacity. The protection so afforded to the workman is independent of the acts of grace or mercy which the employer might show to him. In a welfare State like ours, the protection afforded to a disabled workman cannot be allowed to rest on the mercies and grace shown by the employer. If the employer does so, it is commendable, but the workman has still a stake for his employment which is guaranteed to him under the Workmen's Compensation Act. A learned Single Judge of this Court (P.K.Sethuraman, J.) has also taken a similar view in V.Jayaraj -vs- Thanthai Periyar Transport Corporation Limited (1989 (II) LLJ 38) and held as follows:-

> ''Loss of earning capacity has to be calculated in terms of permanent partial disability which the workman has been subjected to. The fact that the workman is continued in the employment and gets old wages will not absolve the employer from paying the compensation. The employer may continue him in the old post and give him old wages by way of grace, but that would not disentitle the employee to claim compensation. The theme in the Workmen's Compensation Act is to provide security to the workman who received partial incapacity and loss of earning capacity. The extent of loss in the workman's earning capacity has to be calculated having regard to all the facts. Loss of earning capacity in this case was enhanced to 60% in view of the fact that the workman had lost the capacity of hearing of the right ear at 100% and of the left ear at 73.5%."

8. Similar is the view taken by the Kerala High Court in Kerala Minerals and Metals Limited -vs- K.Bhaskaran (1998 (1) LLN 902), wherein the Court observed that in considering the loss of earning capacity in the case of a 'permanent partial disablement', the comparison between the wages drawn by the workmen before and after the accident, from his employer at the time of the accident is not a determinative factor. If that be so, the cunning employer to tide over the liability may offer a temporary employment to the claimant/workman to deprive him his entitlement under the Act. That would be against the legislative intent.

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The plea that there being no loss in the wages, compensation could not have been awarded, cannot be accepted.

9. In any event, Section 72 of the Disabilities Act specifically provides that the provisions of the said Act are to be considered in addition to any other law or order and not in derogation of any law or order. The main object of the Workmen's Compensation Act is to compensate the workman for his injury. Merely because the workman has received the compensation for his injury under the Workmen's Compensation Act, it is not permissible for the employer to deny the benefits of Section 47 of the Disabilities Act, which contains a directive that the employer shall not dispense with or reduce in rank an employee who acquires disability during the service. The benefit envisaged under Section 47 of the Disabilities Act must be considered in addition to the benefits contemplated under the Workmen's Compensation Act. Therefore, the learned single Judge was clearly in error in directing the appellant/workman to refund the compensation received by him under the Workmen's Compensation Act.

10. In the result, the appeal is allowed. The impugned order of the learned Single Judge is set aside. The respondent Corporation is directed to pay the arrears of backwages to the appellant as per the Award of the Labour Court within a period of six weeks from today. Consequently, the connected miscellaneous petition is closed. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Management of Tamil Nadu
State Transport Corporation,
(Coimbatore Division-I) Limited,
Udagamandalam.

2. The Presiding Officer,
Labour Court, Coimbatore.

+ 1 cc to Mr.c.kanagaraj Advocate SR.NO.49815
+ 1 CC to Mr.R.SunilKumar Advocatet SR.NO.49852

SA(CO)
RD 23.8.07

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